

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRUSTEES of the EMPIRE STATE
CARPENTERS WELFARE, PENSION ANNUITY,
APPRENTICESHIP, CHARITABLE TRUST,
LABOR MANAGEMENT COOPERATION, and
SCHOLARSHIP FUNDS,

MEMORANDUM & ORDER
11-CV-1842(JS)(WDW)

Plaintiffs,

-against-

M.R. DRYWALL SERVICES, LLC,

Defendant.

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APPEARANCES

For Plaintiffs: Owen M. Rumelt, Esq.
Levy Ratner, P.C.
80 Eighth Avenue, 8th Floor
New York, NY 10011

For Defendant: No appearances.

SEYBERT, District Judge:

Pending before the Court is Magistrate Judge William D. Wall's Report and Recommendation ("R&R"), issued on August 6, 2012. For the following reasons, the Court ADOPTS this R&R in its entirety.

BACKGROUND

Plaintiffs, the Trustees of the Empire State Carpenters Welfare, Pension Annuity, Apprenticeship, Charitable Trust, Labor Management Cooperation, and Scholarship Funds ("Plaintiffs"), commenced this action on April 14, 2011 seeking payment of delinquent contributions plus interest, liquidated

damages, and attorneys' fees and costs pursuant to Section 502(g)(2) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(g)(2). Defendant M.R. Drywall Services, LLC did not answer the Complaint or otherwise appear in the action. Plaintiffs moved for an entry of default on November 23, 2011 (Docket Entry 3), which was entered by the Clerk of the Court on November 29, 2011 (Docket Entry 4). On February 21, 2012, Plaintiffs moved for default judgment and an award of damages (Docket Entries 5), and on February 24, 2012, the Court referred Plaintiffs' motion to Judge Wall for an R&R (Docket Entry 7).

Judge Wall issued his R&R on August 6, 2012 recommending that a default judgment be granted and that Plaintiffs be awarded damages in the amount of \$3,550.84 in unpaid contributions, \$710.17 in liquidated damages, \$5,311.00 in attorneys' fees, and \$607.38 in costs. Judge Wall did not recommend awarding the pre-judgment interest requested by Plaintiffs because they failed to provide evidence in support of such a request.¹ Judge Wall invited Plaintiffs to submit supplemental evidence in support of their proposed interest calculation for this Court to consider at its discretion.

¹ Plaintiffs only provided the Court with the first two pages of the Joint Policy for Collection of Delinquent Contributions (the "Policy"). The omission of the remainder of the Policy appears to have been intentional.

Plaintiffs have failed to do so. Also, neither party has filed an objection to any portion of Judge Wall's R&R.

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Here, no party objected to Judge Wall's R&R. And the Court finds his R&R to be correct, comprehensive, well-reasoned and free of any clear error. Accordingly, the Court ADOPTS it in its entirety.

CONCLUSION

Judge Wall's R&R is ADOPTED in its entirety. Plaintiffs are awarded a default judgment and damages in the following amounts:

- (1) \$3,550.84 in unpaid contributions;
- (2) \$710.17 in liquidated damages;
- (3) \$5,311.00 in attorneys' fees; and
- (4) \$607.38 in costs.

The Clerk of the Court is directed to enter a Judgment consistent with this Memorandum and Order and to mark this matter CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: August 21, 2012
Central Islip, NY